

**Speech-Language Pathology and Audiology Board**

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**STATE OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY BOARD
Marina Beach Hotel "Marriott"
4100 Admiralty Way
Marina Del Rey, CA 90292
January 17, 2003
BOARD MEETING
MINUTES**

Members Present

Alison Grimes, AuD, Chairperson
Sherry Washington, M.A.
Bruce Gerratt, Ph.D.
Marcia Raggio, Ph.D.
James Till, Ph.D.
Rebecca Binge, M.A.
Vivian Shannon, M.A.

Staff Present

Annemarie Del Mugnaio, Executive Officer
Candace Raney, Staff Analyst
Lori Newman, Staff Analyst
George Ritter, Staff Counsel

Members Absent

Paul Donald, M.D.

Guests Present

Gregory Frazer, Ph.D., AuD.
Carlos Ramirez, Senior Supervising Deputy Attorney General,
Office of the Attorney General, Health Quality Enforcement Section
Dennis Van Vliet, American Board of Audiology, California Academy of Audiology
Michael Metz, Audiology Associates

I. Call to Order

Chairperson Grimes called the meeting to order at 11:50 a.m.

II. Introductions

Those present introduced themselves.

III. Approval of Meeting Minutes for May 10, 2002 – Committee Meetings and Full Board Meeting and November 14 – 15, 2002 – Committee Meetings and Full Board Meeting

M/S/C: Bingea/Raggio

The Board voted to approve the May 2002 Board and Committee meeting minutes as amended.

M/S/C: Raggio/Bingea

The Board voted to approve the November 2002 Board and Committee meeting minutes as amended.

IV. Chairperson's Report (Alison Grimes)

A. Report on Interaction with the California Children Services' Newborn Hearing Screening Program

Ms. Grimes stated that as a follow-up to the Board's discussion at the last meeting, Ms. Del Mugnaio sent a letter to Maridee Gregory, Director of the California Children Services' Newborn Hearing Screening Program, to express our Board's desire to exchange pertinent information about common practice issues.

Ms. Del Mugnaio explained that, subsequent to sending the letter, Dr. Hallie Morrow, Medical Consultant, for the Program called to inquire about the events that prompted our letter. Ms. Del Mugnaio explained to Dr. Morrow that there are crosscutting issues relative to unprofessional conduct by providers under the Newborn Screening Program and that the Board would like to establish a reporting mechanism between the two agencies. Ms. Del Mugnaio also invited a Department of Health Services representative to attend the Board meeting to speak to this issue or to observe the Board's discussion relative to this issue.

Ms. Del Mugnaio and Dr. Morrow discussed various aspects of enforcing the laws and regulations that govern the practice of audiology.

Ms. Del Mugnaio explained that she forwarded a copy of the agenda for this meeting to Dr. Morrow and again invited her to attend the meeting. Ms. Del Mugnaio informed her that she would provide the Board a summary of their conversation including the information that, at this point, there is not a formal enforcement process employed for the Newborn Hearing Screening Program and that there is currently no initiative to develop a certification for pediatric audiology. Dr. Morrow indicated she was interested in attending the Board meeting. However, due to budget constraints, she would have to attend the next meeting scheduled in Sacramento.

Ms. Grimes thanked Ms. Del Mugnaio for her efforts to initiate cooperation between the two agencies relative to this matter.

V. Committee Reports

A. Continuing Professional Development Committee (Gerratt)

Ms. Grimes stated that the Continuing Professional Development (CPD) Committee met to discuss issues related to CPD.

Ms. Grimes explained that one issue brought before the committee was regarding the approval of CPD providers vs. specific CPD course offerings. Currently, the Board approves only providers and the specific courses offered by that provider are not subject to Board review. There have been several incidents where courses offered by approved providers do not meet the CPD renewal requirements for audiologists and/or speech-language pathologists.

Ms. Grimes explained that a licensee may take a course from an approved provider unaware that the course itself is not approved and may not meet license renewal requirements.

A discussion ensued regarding modifications to the Board's current process and standards. The committee discussed the possibility of a legislative amendment that would require approval of both the CPD provider and the courses.

In addition, the committee discussed developing guidelines to assist staff with reviewing the CPD courses. Ms. Del Mugnaio explained that the staff is experienced in approving CPD providers. However, periodically, there are courses that require the expertise or knowledge of a practicing professional to determine applicability.

Ms. Grimes stated that Ms. Del Mugnaio provided the committee with information regarding how other healing arts boards handle such situations.

Ms. Grimes stated that a motion was made and passed to recommend to the Board that these issues be delegated to the Audiology and Speech-Language Pathology Practice Committees for the purpose of developing some general reference materials to which the staff can refer for making determinations about the appropriateness of CPD courses. The staff would continue to consult with professional members of the Board when determining the relevance of courses of particular difficulty or ambiguity. Staff was requested to provide the committee with examples of such courses considered in the past.

M/S/C: Bingea/Gerratt

The Board voted to accept the report and recommendations of the Continuing Professional Development Committee.

B. Speech-Language Pathology Practice Committee (Till)

Mr. Till explained that the Speech-Language Pathology Practice Committee met to discuss an outline of SB 1379 prepared by Legal Counsel, George Ritter.

Mr. Till explained that the committee spent considerable time reviewing and discussing each of six different topics outlined by Mr. Ritter. He stated that after a careful and detailed review and discussion regarding the implementation of SB 1379, the committee decided to recommend to the Board that no further regulatory action be pursued and that the Executive Officer will distribute an informational mailing to members of the public on the Board's mailing list as well as the Board's licensing population.

M/S/C: Gerratt/Raggio

The Board voted to accept the report and recommendation of the Speech-Language Pathology Practice Committee.

C. Licensing and Education Committee (Washington)

Ms. Washington explained that the Licensing and Education Committee met to discuss issues related to Board-approved professional training programs awarding advanced degrees and the related regulations for advertising such professional degrees. In addition, the committee was delegated the task of assigning a task force to review and report on the American Speech-Language-Hearing Association's (ASHA) new certification standards for speech-language pathology and audiology and the impact on state regulations.

Ms. Washington explained that the committee discussed potential conflicts in the Board's regulatory language and ASHA's accreditation standards regarding the use of the terms "institutions" and "programs." She stated that the committee discussed the matter extensively and voted to recommend to the full Board that the Executive Officer and Board Legal Counsel work together to develop regulatory amendments to the California Code of Regulations Sections 1399.152 to clarify the definition of a board-approved educational institution meaning one which houses a training program accredited by ASHA and holds regional accreditation.

Ms. Washington stated that Mr. Frederick Jacobs attended the committee meeting to address the committee and provided information relative to his particular situation regarding the advertising of an advanced degree obtained in a discipline other than audiology. She stated that Mr. Jacobs urged the Board to consider these matters on a case by case basis. She stated that the committee discussed Mr. Jacobs' situation and advised him that the Board is not currently in a position to amend the regulations to allow him to advertise his advanced degree in a manner other than what is currently required. The committee recommended that Mr. Jacobs address his concerns to the university where he obtained his advanced degree.

Ms. Washington explained that the committee also discussed the matter of ASHA amending its certification standards for speech-language pathology effective 2005 and for audiology effective 2007. Ms. Washington stated that Ms. Raggio and Mr. Till graciously volunteered to serve as the taskforce assigned to review the new certification standards of ASHA. The taskforce will review the new certification standards and provide a report to the Board regarding the impact of the new standards on State regulation in January 2004.

M/S/C: Till/Raggio

The Board voted to accept the report and recommendations of the Licensing and Education Committee.

VI. Executive Officer's Report (Annemarie Del Mugnaio)

A. Budget Update

Ms. Del Mugnaio explained that the projections provided reflect projected expenditures through the end of the 2002/2003 fiscal year. She stated that the projections reflect a very low reversion rate and reminded the Board that the budget continues to be very restrictive.

B. Website Update

Ms. Del Mugnaio explained that staff has arranged for a link to the Health Insurance Portability and Accountability Act of 1996 website on the Board's website. This serves to provide licensees with information regarding the implementation of and compliance with the requirements of HIPAA.

Ms. Del Mugnaio stated that there were many updates to the website as a result of the implementation of SB 1379.

C. Report on Status of the Occupational Therapy Board's Proposed Regulations for Feeding and Swallowing (Bruce Gerratt/Sherry Washington)

Mr. Gerratt stated that the Occupational Therapy Board's proposed regulations for feeding and swallowing are still in the process of being drafted.

Ms. Del Mugnaio indicated that she will follow-up with the Executive Officer of the Occupational Therapy Board to determine at what point the Speech-Language Pathology and Audiology Board will be requested to provide input into the draft regulations.

D. Access to Citation Information on the Internet

Ms. Del Mugnaio explained that Board staff is still working with the Department of Consumer Affairs Office of Information Services to establish citation information on the Board's website.

VII. Discuss Draft Sunset Review Narrative and Time-Line for Completion of Final Report

Ms. Del Mugnaio explained that included in the board packet is a timeline for completion of the Sunset Review Report and benchmarks for when certain items need to be completed.

Ms. Del Mugnaio explained that the Board needs to have a draft report ready for review by the April 2003 meeting. She advised that the Sunset Review Committee should meet between April and July to make final edits to the report and that the final report should be adopted at the Board's July 2003 Board meeting. A report will be transmitted to the Legislature around September 1, 2003.

Ms. Del Mugnaio provided the Board with information regarding the sunset review process after submission of the Board's report to the Legislature.

Ms. Del Mugnaio requested that the Board review the document provided by Ms. Raggio and submit suggested edits to Ms. Raggio for incorporation into the draft report to be presented at the April 2003 meeting.

VIII. Discussion of the Board's Amended Complaint Disclosure Policy (Carlos Ramirez, Senior Assistant Attorney General)

Ms. Del Mugnaio stated that at the last Board meeting, the Board voted to amend the Board's complaint disclosure policy to disclose information relative to enforcement cases at the point of referral to the Office of the Attorney General as opposed to the current policy which mandates disclosure at the point an accusation is filed.

Ms. Del Mugnaio explained that Senior Assistant Attorney General, Carlos Ramirez was present to discuss issues related to the Board's complaint disclosure policy.

Mr. Ramirez explained that Office of the Attorney General has been in the process of reviewing the issue of complaint disclosure. He stated that by disclosing enforcement actions at the point of referral of the matter to the Office of the Attorney General, the Board may be vulnerable to a legal challenge by infringing upon the due process rights of the professional.

Mr. Ritter explained that the State Contractor's License Board has taken action to promulgate regulations that include their complaint disclosure policy.

Ms. Grimes stated that this issue places the Board in an awkward situation in attempting to balance the public's "right to know" with protection of the licensee's due process rights.

Mr. Ritter recommended that if the Board chooses to disclose enforcement actions at the point of referral to the Office of the Attorney General, the Board should include disclaimer information to inform all interested parties that the allegations are considered unproven until such time as all administrative remedies have been exhausted and the respondent has been provided due process.

M/S/C: Till/Raggio

The Board voted to rescind the motion at the November 2002 Board meeting and revert to the complaint disclosure policy adopted August 10, 2001 and further to pursue regulations to establish an amended complaint disclosure policy to disclose enforcement actions at the point of referral to the Office of the Attorney General.

IX. Review of Legal Opinion “At What Point May A Person Commence Practice After A Professional License Has Been Issued.”

Ms. Grimes stated that based upon the legal opinion provided by George Ritter, Legal Counsel, an audiologist or speech-language pathologist is not in violation of the law if they practice between the time that the license is issued and the time that the actual license document is received in the mail by the licensee to be displayed at his or her primary place of business.

Ms. Del Mugnaio reiterated that licensee information is available via the Board’s website.

M/S/C: Raggio/Bingea

The Board voted to accept the opinion of legal counsel regarding “At What Point May A Person Commence Practice After A Professional License Has Been Issued.”

X. Meeting Calendar 2003

The Board decided to hold a meeting to review and discuss issues relative to the Sunset Review Report on March 14, 2003.

The Board decided to change the meeting dates for the April meeting from April 25 – 26, 2003 to April 24 – 25, 2003 to be held in Sacramento.

The Board scheduled a subsequent meeting for July 17 – 18, 2003 also to be held in Sacramento.

XI. Public Comment on Items Not on the Agenda

Mr. Michael Metz addressed the Board regarding dual licensure. Mr. Metz stated that he would like to ask the Board to take a proactive stance relative to consumer protection as well as protection of dually licensed audiologists dispensing hearing aids.

Mr. Metz explained that a great deal of confusion exists relative to public perception of hearing aid dispensers and audiologists. Consumers do not understand the difference in the level of education and expertise between audiologists and hearing aid dispensers. In addition, the practice of “bundling” of fees encourages confusion on the part of the consumer in that the consumer does not understand which fees are for services provided and which fees are for products and/or devices.

Mr. Metz suggested amending the Speech-Language Pathology and Audiology Act to include the passing of title of a hearing aid. He stated that the only restriction imposed on an audiologist is that to actually pass the title of the hearing aid. If the requirements for this function were to be included in the laws and regulations for audiology, there would be no reason for an audiologist to also hold a hearing aid dispenser's license.

Mr. Ritter explained that such an amendment would require a statutory change to both the Hearing Aid Dispensing laws and the laws governing the practice of audiology.

Ms. Del Mugnaio explained that the issue as presented is not one in which the Board should take an active role as it pertains to alleviating a licensing burden for the professional and not a true consumer protection initiative.

Mr. Ritter explained that it is not within the authority of this Board to establish regulations that are inconsistent with existing statutes.

Ms. Del Mugnaio stated that the issue of dual licensure is already a part of the Board's Sunset Review Report to be presented to the Legislature.

Ms. Del Mugnaio advised Mr. Metz that an effective way to address this matter would be to organize with the professional association and together bring the matter before the Legislature during the sunset review process.

Ms. Grimes advised Mr. Metz that, in bringing to the matter to the Legislature, he needs to establish and demonstrate a valid consumer protection issue that would present a compelling reason to initiate changes to the current laws and regulations.

XII. Announcements

A. Next Board Meeting is April 25-26, 2003 Sacramento

As reported under Agenda Item X, the Board decided to change the April meeting to April 24 – 25, 2003.

BOARD CONVENED IN CLOSED SESSION

XIII. Closed Session (pursuant to Government Code Subsections 11126 (a)(1) Discussion of Executive Officer Position and Recruitment

Ms. Grimes reported that the Board took no significant action during closed session.

BOARD RECONVENED IN OPEN SESSION

XIV. Discussion of possible action requesting formal opinion by the Office of the Attorney General concerning patient referrals for free audiological services

Ms. Del Mugnaio explained that the Board discussed this matter extensively at the November 2002 meeting but was unable to make a motion on the matter because of a lack of a quorum. As such, a motion on the matter was deferred to this meeting.

Ms. Del Mugnaio asked Mr. Ramirez to provide information relative to how a legal opinion rendered by the Attorney General's Legal Opinion Office might support future administrative action.

Mr. Ramirez explained that while a formal legal opinion does not have the full force and effect of a statute, it does provide a strong legal basis for any action taken.

M/S/C: Till/Raggio

The Board voted to request a legal opinion of the Office of the Attorney General, Legal Opinions Unit on the issue of whether a violation of Business and Professions Code 650 occurs when a health service plan refers its enrollees to a licensed audiologist for free or discounted hearing assessments which are a covered benefit under the health service plan.

XV. Adjournment

There being no further discussion, Chairperson Grimes adjourned the meeting at 4:15 p.m.

Annemarie Del Mugnaio, Executive Officer